

## **NAIFA - IL**

National Association of Insurance  
and Financial Advisors - Illinois

## **ISAHU**

Illinois State Association of  
Health Underwriters

## **IIA of Illinois**

Independent Insurance Agents  
of Illinois

### **Illinois Coalition of Insurance Agents & Brokers**

On behalf of the Illinois Coalition of Insurance Agents & Brokers (producers) we submit the following comments on Health Management Associates Final Report on Illinois' Navigator Program Design.

We previously provided to HMA and submit again our Partnership White Paper developed in collaboration between the Crossroads Coalition and our Agent Broker Health Reform Working Group which provides a detailed outline of our vision for the role of Navigators and licensed insurance producers in Illinois' Health Benefit Exchange. In addition, we have included a position paper issued during the 2012 session of the Illinois General Assembly on the subject.

We are concerned that many of the recommendations in the report will have navigators performing functions that require licensure as a producer. It's not the job title or the name that determines whether someone needs a producer's license; it's what they do. "Identifying and enrolling individuals" and "assisting individuals with selection of QHPs in an exchange" or "assistance with coverage renewal" are all activities which require licensure in Illinois. It would be our strongest recommendation that the authors revisit their comments and recommendations to ensure that navigators are not illegally performing activities which require a producer's license.

In addition, we offer the following comments and observations on HMA's Final Report. On the whole, we find the report accurate and balanced. However, two issues stand out and require clarification.

#### **1. Clear definition between the role of navigators and producers**

It is critically important that the duties of navigators be clearly defined and kept separate from the role of a licensed insurance producer and that is why we believe Navigators should primarily target underserved communities involving uninsured and underinsured individuals falling into the Medicaid – eligible and possibly the Exchange subsidy – eligible population. Insurance producers should continue to work with individuals and small employers purchasing coverage through private qualified health plans listed on the Exchange.

The report states, "However, there was no clear consensus among stakeholders on the question of whether Navigators should be expected to play a substantial role in the small employer market, beyond widespread recognition that doing so would require more specialized training and greater interaction with producers."

The Illinois Insurance Code provides clear legal definitions on what activities trigger the requirement that an individual obtain a producer license (215 ILCS 5/500-15).

Therefore, while the legal requirement is perfectly clear, we believe any information defining the role of Navigators must be equally clear. To not do so will create a multitude of problems.

Consumers – when things go wrong, and they will, how would a consumer seek redress from a Navigator? Producers can be disciplined by the Department of Insurance through fines, license suspension and revocation and, as happens today, sued. Insurance producers maintain professional liability coverage – “Errors & Omissions” insurance – to cover them and to provide redress to those harmed in the event of a mistake.

For Example: The report states initial and on-going Navigator training would be required to assist individuals with the following eligibility and enrollment-related activities: “Identify and support eligible individuals with gaining coverage through the Exchange or Medicaid using the Exchange’s web portal; assist eligible individuals with selection of an Exchange QHP and Provide post-enrollment support, including customer service support as well as assistance with coverage renewal.” These functions clearly resemble those being performed and required by a licensed insurance producer and their professionally trained staff today. How would this expert advice, ongoing service and renewal support be expected of a Navigator without it being subject to liability?

In addition, licensed producers are trained and knowledgeable with HIPPA and privacy laws and regulations and are keenly aware of the many compliance requirements of the PPACA.

Department of Insurance – We also would submit that by not clearly delineating the rules, it would create a regulatory nightmare for the Department of Insurance regulatory and legal staff.

## **2. Compensation**

To determine a fair level of compensation for the Navigator, the Report suggests comparing existing compensation levels of current State programs like AKAA’s \$50 payment per applicant to producer compensation models. The examples outlined in the report are outdated and no longer accurate. Insurer compensation plans were changing prior to implementation of the PPACA and with the Medical Loss Ratio requirement in effect, they have been drastically reduced. Current producer commission levels in the Chicago market range as follows: Individual Policies 4% to 10% of premiums year one and 2% to 5% year two and thereafter depending on the carrier. Small Group compensation has in most cases shifted to a per employee per month payment rather than commission. The smallest groups (2-4 employee lives, regardless of single or family) average \$10 pepm which compared to a commission scale might average 1%. Groups with 5+ lives (regardless of single or family) average \$30 pepm which compared to a commission scale would average 2% to 3%. This per employee payment amount does not change yearly but can be adjusted for inflation at the carrier’s discretion. Large group has also changed in most cases to a fee model per employee per month and would average 1% – 2% on a commission scale.

The Report suggests Navigators receive grants and a performance fee. It will be important this fee place emphasis on uninsured individuals rather than just enrollment to avoid cannibalizing existing insureds already covered through employer groups. Again, their efforts should be focused on education and awareness of the Exchange and Medicaid in the underserved communities.

### **3. Scope of Navigator Advice and Bias**

The report has an inherent flaw that arises when navigators provide assistance that infringes on the role of licensed producers. This occurs since a navigator will not have the knowledge and experience of the entire insured marketplace. As such, any person who meets with a navigator will be steered to an exchange-based plan. While an exchange-based plan may provide the best option for many, there will be situations where a plan outside of the exchange is actually the best solution for the client. One can envision a situation where the affordable plan on the exchange may not adequately meet the needs of a person with a particular chronic disease or disability where a plan outside the exchange will be affordable and meet this need. In fact, at the HHS hearing in Chicago last year, an advocate for people with disabilities spoke to this topic noting that one plan is not always as good as another plan. Knowledge of the entire market is needed to preclude bias. In fact, it is to preclude a similar bias that we have recommended that producers wishing to work with the exchange must develop expertise of exchange-based plans and public plans.

### **Closing Comments:**

The original Mission of the Crossroads Coalition Community – Agent / Broker Partnership was to improve access to healthcare coverage and services for all Illinoisans, with particular focus on access through the Illinois Health Benefit Exchange. Defining the proper role of the Navigator and Producer and appropriately compensating both will be critical to the success of this mission and vitality of the Illinois Health Benefit Exchange.



## **Agent Compensation**

- Same for QHP inside and outside the exchange
- Health issuers determine as they do today – Exchange has no role
- Removes possibility of agents steering or directing individuals and small employers to the higher compensated plan – anti-selection
- Reduces potential costs the exchange would otherwise incur

### **Navigators-**

Add on page 30, new 5-17(a)

(a) Only a person licensed as an insurance producer in this state may:

- (i) Sell, solicit, or negotiate disability or health insurance;
- (ii) Confer with or offer advice to purchasers, enrollees, or prospective purchasers or enrollees concerning the benefits, terms, or conditions of qualified health plans; or
- (iii) Enroll an employer or individual in a qualified health benefit plan offered through the exchange or facilitate enrollment in a qualified health plans.

**Navigators and Producers** - We are proposing language that will reinforce current law, that anyone who is selling, soliciting, negotiating or enrolling individuals or small employers into QHP's is required to have a producer's license in Illinois. The purpose of this language is to create a bright line between the activities of a licensed producer and a navigator. This follows from our Navigators "White Paper" developed with the Crossroads Coalition and we believe is critical to the enforcement activities of the Department of Insurance and maintain sanity in the marketplace.

Our rationale:

1. Creates a bright line between the functions of licensed insurance producers and navigators

(over)

2. Licensed insurance producers will be enrolling individuals and small employers in QHP in and outside of the exchange. Navigators will be enrolling individuals in the Medicaid program and conducting outreach and public education about the exchange, including QHP, but not actually enrolling individuals and small employers. This would be accomplished by referring those individuals and small employers to exchange "certified" producers who are listed on the exchange website (HB 4141).

3. This arrangement is supported by the exchange regulations issued by HHS dealing with agents & brokers and navigators and is further supported by additional regulations and reality. Navigators cannot receive any consideration (compensation), directly or indirectly, from any health insurance issuer and they do not have Errors & Omissions Insurance (professional liability) to cover liability in the event of claim.

4. Most importantly if navigators are allowed to enroll individuals and small employers into QHP, it creates a regulatory nightmare for the Illinois Department of Insurance and Illinois consumers No producer license, no license fees, no continuing education, no professional liability insurance, no business entity license or the dozens of other statutory and regulatory requirements producers have to comply with today.

